

1 The opinion in support of the decision being entered
2 today is *not* binding precedent of the Board
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6 UNITED STATES PATENT AND TRADEMARK OFFICE
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9 BEFORE THE BOARD OF PATENT APPEALS
10 AND INTERFERENCES
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13 *Ex parte* ROBERT JOHN COLVER
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16 Appeal 2006-3415
17 Application 09/601,810
18 Technology Center 3600
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21 Decided: September 26, 2007
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24 *Before:* WILLIAM F. PATE, III, MURRIEL E. CRAWFORD, and
25 JENNIFER D. BAHR, *Administrative Patent Judges*.

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27 CRAWFORD, *Administrative Patent Judge*.
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29

30 DECISION ON APPEAL
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32 STATEMENT OF CASE

33 Appellant appeals under 35 U.S.C. § 134 (2002) from a final rejection
34 of claims 43-56. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

35 Appellant invented a method of constructing a building unit
36 (Specification 1).

37 Claim 43 under appeal reads as follows:

1 43. A method of constructing a building unit module having two
2 pairs of opposing sides, a roof and a floor, the method comprising
3 forming at least three substantially similar rectangular frame
4 members, positioning the frame members vertically in an aligned row
5 one with the other with a spacing between each adjacent pair of frame
6 members, connecting a plurality of horizontal runners to the frame
7 members with horizontal runners parallel to each other, extending
8 along one pair of said two pairs of sides with a spacing between each
9 adjacent pair of runners to form a lattice framework, whereby loads on
10 the module are distributed substantially equally throughout the
11 framework, securing horizontal angle members to the internal corners
12 of the lattice framework, and securing sheeting to the lattice
13 framework via the runners so as to form an enclosure.¹
14

15 The Examiner rejected claims 43-56 under 35 U.S.C. § 103(a) as
16 being unpatentable over Payne in view of Bowers.

17 The prior art relied upon by the Examiner in rejecting the claims on
18 appeal is:

| | | |
|-----------------|--------------|---------------|
| 19 Bowers | US 3,605,350 | Sep. 20, 1971 |
| 20 Payne | US 5,735,639 | Apr. 07, 1998 |

21
22 The Examiner found that Payne discloses the invention as claimed
23 except that Payne does not disclose connecting a plurality of horizontal
24 runners to the rectangular frame members. The Examiner relied on Bowers
25 for teaching connecting a plurality of horizontal runners to the frame
26 members. The Examiner concluded that it would have been obvious to a
27 person of ordinary skill in the art to modify the Payne method so as to

¹ The claims presented in the Claim Appendix to Appellant's Brief includes the claims as presented in an Appellant's Amendment After-Final filed on April 5, 2004. However, the Amendment was not entered. Therefore, the claims before us are the claims prior to the attempted amendment.

1 include the step of connecting a plurality of horizontal runners to provide a
2 stronger unit wall.

3
4 Appellant contends that neither Payne nor Bowers describes (1)
5 vertically positioning rectangular frame members or “ribs” in a row
6 substantially parallel to each other and therefore do not disclose a lattice
7 framework, and (2) the addition of corner members and connecting sheeting
8 to the horizontal members. In Appellant’s view Payne and Bowers disclose
9 four perpendicular walls that are connected together to form a structure.

10 Appellant further contends that in the structure disclosed by Payne,
11 the loads are not distributed substantially equally throughout the framework.

12 ISSUES

13 The first issue is whether Appellant has shown that the Examiner
14 erred in finding that Payne discloses rectangular frame members that are
15 connected by horizontal runners to form a lattice framework.

16 The second issue is whether Appellant has shown that the Examiner
17 erred in finding that the loads are distributed substantially equally
18 throughout the framework disclosed in Payne.

21 FINDINGS OF FACT

22 Appellant discloses a method of constructing a building unit module
23 including the step of forming three substantially similar rectangular frame
24 members 4. The frame members have a plane formed by the four sides of
25 each frame member and each frame member has opposing sides, on which
26 the roof and floor are to be formed. The rectangular frame members are

1 positioned vertically in an aligned row and then connected by horizontal
2 runners 6 to form the module thereby forming a lattice framework
3 (Specification 7). Horizontal angle members are secured to the corners of
4 the lattice framework and then sheeting is secured to the lattice framework
5 thereby forming an enclosure (Specification 8).

6 Payne describes a method of constructing a building unit module
7 including the step of forming three substantially similar rectangular frame
8 members 192, 194, 196.....210 (Fig. 5). The rectangular frame members are
9 positioned vertically in an aligned row and connected by horizontal runners
10 216, 218, 220230 to form a lattice framework (Fig. 5). Horizontal angle
11 members 56 are secured to the corners of the lattice framework and sheeting
12 is secured to the lattice framework so as to form an enclosure (Fig. 1). As a
13 lattice framework is formed, loads are distributed substantially equally
14 throughout the framework.

15 Bowers discloses a method of constructing a building unit module
16 including the step of positioning rectangular frame members vertically in a
17 row and connecting a plurality of horizontal runners to the rectangular frame
18 members with the horizontal frame members parallel to each other thereby
19 forming a lattice framework (Fig. 15).

21 DISCUSSION

22 We will sustain the rejection of the Examiner. We are not persuaded
23 by the Appellant's argument that Payne does not disclose ribs, because this
24 argument is not commensurate in scope with the recitation in claim 43.
25 Claim 43 does not recite "ribs" but rather "rectangular frame members."

1 Each of the members 192, 194, 196...210 is a rectangular member which is
2 used to construct the frame of a building and thus is a rectangular frame
3 member as claimed. As these rectangular members are each connected to
4 two horizontal runners 216, 218, 220230, we agree with the Examiner
5 that a lattice framework is formed. In addition, Bowers also discloses a
6 lattice framework. We note that sheeting is placed over the Payne lattice
7 structure to form the building.

8 We are also not persuaded by the Appellant's argument that the lattice
9 structure of Payne does not distribute load substantially because as the Payne
10 structure is a lattice framework the load would be substantially evenly
11 distributed through out the structure.

12 Appellant has not argued the separate patentability of claims 44-56.
13 Therefore, these claims stand or fall with claim 43.

14 The decision of the Examiner is *affirmed*.

15 No time period for taking any subsequent action in connection with
16 this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2006).

17 AFFIRMED

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